

**Letter of Findings: 65-20220062
Overweight Civil Penalty
for the Year 2022**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department denied Carrier's protest of the civil penalty imposed regarding Carrier's commercial motor vehicle's ("vehicle") overweight violation.

ISSUE

I. Motor Vehicles - Overweight Civil Penalty.

Authority: IC § 6-8.1-1-1; IC § 6-8.1-5-1; IC § 9-20-18-14.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Carrier protests the assessment of an overweight vehicle civil penalty.

STATEMENT OF FACTS

On March 8, 2022, the Commercial Vehicle Enforcement Division of the Indiana State Police ("ISP") cited the Carrier's commercial motor vehicle ("vehicle") for an overweight violation. ISP found that the vehicle was "over [the] gross allowed" weight, "over allowable axle weight-axle 5," and "over allowable axle weight" on "axle 4." Carrier did not have an "OSW permit when required." As a result, the Department issued Carrier a "DOR Civil Penalty Proposed Assessment for Oversize/Overweight Violation(s)," in the amount of \$5,000. Carrier filed a protest; an administrative telephonic hearing was held. Additional facts will be provided below, as necessary.

I. Motor Vehicles - Overweight Civil Penalty.

DISCUSSION

Carrier states in its protest letter that it "agree[s] that our truck was overweight at the time of the Inspection." Carrier states that it has "Toll Road permits to be at the 90,000 lb. [sic] limit[.]" and that Carrier's "driver originally loaded to go to a facility that would allow the extra weight via going the Indiana toll road. However, after he was loaded, he was rerouted to Terre Haute via US 41." Carrier concedes, "Our driver was in error, he should have gone back and taken off 200 lbs. off his load to get legal on a regular route that is not via the Indiana toll road."

Turning to the law, pursuant to IC § 6-8.1-1-1, the "fees and penalties assessed for overweight vehicles ([IC 9-20-4](#) and [IC 9-20-18](#))" are a listed tax. Thus, as a threshold issue, it is a taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

The Department's proposed assessment, mailed to Carrier on May 23, 2022, states in pertinent part (**emphasis in the original**):

Indiana Code section 9-20-18-14.5(c): A carrier failing to obtain a permit required under Indiana Code 9-20 is subject to a civil penalty not more than \$5,000 for each violation.

DOR is proposing an assessment of the maximum civil penalty amount of \$5,000 ("Proposed Assessment")

IC § 9-20-18-14.5, in its entirety, states:

(a) The civil penalties imposed under this section are in addition to the other civil penalties that may be imposed under [IC 8](#) and [IC 9](#). Notwithstanding section 12 of this chapter, a civil penalty imposed under this section:

(1) is imposed on the carrier transporting the vehicle or load;

(2) shall be deposited in the motor carrier regulation fund established by [IC 8-2.1-23-1](#);

(3) is in addition to any fees or fines imposed by a court; and

(4) is assessed and determined by the department of state revenue in accordance with the procedures in [IC 6-8.1-5-1](#).

(b) A carrier transporting vehicles or loads under a permit issued under this article that is violated with respect to this article subjects the carrier to a civil penalty of not more than one thousand dollars (\$1,000) for the first violation and not more than one thousand five hundred dollars (\$1,500) for each subsequent violation.

(c) A carrier that transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty of not more than five thousand dollars (\$5,000) for each violation described in an Indiana state police vehicle examination report.

(d) A carrier that transports vehicles or loads subject to this article in excess of the legal weight or dimensional limits and for which no permit is available to allow for such excess weight or dimension is subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each issued Indiana state police vehicle examination report.

(e) The department of state revenue may not assess a penalty under this section after more than one (1) year has passed from the date the department is notified of a violation described under subsection (b), (c), or (d).

(f) A carrier against whom a civil penalty is imposed under this section may protest the civil penalty and request an administrative hearing. If a carrier protests a civil penalty, the department of state revenue shall allow the carrier an opportunity to present information as to why the civil penalty should not be assessed or reduced pursuant to a defense provided under section 7 of this chapter.

*(g) The department of state revenue's notice of proposed assessment under [IC 6-8.1-5-1](#) is presumptively valid. (*Emphasis added*).*

Thus, pursuant to IC § 9-20-18-14.5(a)(1), the civil penalty is imposed on the carrier; and in the instant case, the Department issued a proposed assessment for \$5,000 pursuant to IC § 9-20-18-14.5(c).

Carrier's argument is that despite being overweight when leaving the terminal (the terminal ticket, referred to as "shipping paper" by ISP, shows a gross weight of 81,540 pounds), and conceding that the "truck was overweight at the time of Inspection," Carrier nonetheless "request[s] that [the Department] dismiss the proposed civil penalty."

Carrier has provided no documentation or analysis to show that the ISP report was inaccurate or that the Department misapplied the law. Thus, Carrier has failed to meet the burden of proof outlined in IC § 6-8.1-5-1(c).

FINDING

Carrier's protest is denied.

July 29, 2022

Posted: 05/03/2023 by Legislative Services Agency
An [html](#) version of this document.